

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 23 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARIMALABEN V DESAI

Versus

STATE OF GUJARAT

Appearance:

MR SP HASURKAR for Petitioner
MS PS PARMAR for Respondents No. 1, 2
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/06/97

ORAL JUDGEMENT

1. The petitioner by way of this Special Civil Application challenges the order of the Dy. Collector, Baroda dated 29th October, 1990 in the case of Electricity Case No.93/90 as well as the order under which the said authority refused to set aside the aforesaid order.

2. The facts of the case are that the respondent No.3, herein, claiming himself to be the tenant of the petitioner filed an application before the Deputy Collector, Baroda, and prayer has been made therein for necessary directions to be issued to the Electricity Board to give the electric connection in the premises in dispute. The notice of this application has been received by the petitioner. She contested the said application and the contest has been made on the ground that the respondent No.3 is not the tenant in the premises. The said application of the respondent No.3 came to be allowed under the impugned order.

3. The petitioner filed an application for setting aside of the said order on the ground that it has been made ex-parte. The said application has also been dismissed. Hence, this Special Civil Application.

4. The counsel for the petitioner contended that the order impugned in this Special Civil Application has been made without giving an opportunity of hearing to the petitioner. It has next been contended that the petitioner has disputed the relationship of the landlord and tenant, and the Deputy Collector has no jurisdiction under sec.23A of the Bombay Rent Control Act to decide the said relationship, and more so, to give a finding that the respondent No.3 is a tenant in the premises. Lastly, it has been contended that the respondent No.3 himself has filed a civil suit No.582/89 in the Court of Small Causes, for declaration to the effect that he may be declared as a tenant and his possession may be protected.

5. Nobody is present on behalf of the tenant to oppose this Special Civil Application.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

7. It is true that the application filed by the tenant under sec.23A of the said Act has to be decided after giving the landlord and the owner of the premises if he is not the landlord, an opportunity of being heard. It is not in dispute that the notice of this application has been given to the petitioner and she put appearance in those proceedings through an advocate. The grievance of the petitioner in this Special Civil Application is that on 23rd October, 1990, a request had been made by the petitioner for the adjournment of the case. The application in this respect had been submitted and the

advocate for the petitioner waited for the Deputy Collector upto 1-30 p.m. since the said officer was engaged in Bandobast at Savli. It was given out to the petitioner's counsel that there will be an adjournment on that date. The concerned Clerk told that he will be informed about the next date by registered A.D. Thereafter, the counsel for the petitioner repeatedly visited the office of the Dy. Collector and inquired about the dates. However, the Clerk handling the work was on leave and therefore for the reasons best known to the office of the Dy. Collector, the petitioner's lawyer was not informed about the date, and which has resulted in passing of the ex-parte order. The petitioner has very conveniently avoided to disclose the name of the Clerk who has given out that the case will be adjourned and he will be informed about the date of the adjournment by registered post. The conduct subsequently of 23rd October, 1990 is also very important and the petitioner has made very vague statement. The affidavit of the counsel who was appearing for the petitioner in those proceedings has not been filed. The counsel was the best person to state all these things, but he has not filed an affidavit. The petitioner has not filed any affidavit in support of his averments before this Court. The affidavit which is there in the petition is not signed by the deponent, even all the blanks are left out i.e. the name of the deponent is not given nor it is affirmed. So the averments made aforesaid are only averments not supported by an affidavit. This is another reason on which these averments cannot be accepted. That seems to be an attempt on the part of the petitioner to delay the proceedings.

8. So far as the second contention is concerned, it is suffice to say that while deciding the application, the Deputy Collector has only to prima-facie satisfy that the applicant is in possession of the premises and he claims himself to be the tenant. On the basis of material produced, this prima-facie satisfaction should be recorded. Whatever finding given on this question of relationship of landlord and tenant by the Dy. Collector in the proceedings is not a final determination on this issue and rightly it has been contended by the counsel for the petitioner that that authority is not competent to decide this question finally. Whatever finding has been given on this question by the Dy. Collector is not binding to the parties in the regular civil suit. It is made clear, as prayed by the counsel for the petitioner, that the finding as recorded on the question of relationship of landlord and tenant in these proceedings by the Dy. Collector shall not be binding on the

petitioner in the civil suit filed by the respondent No.3 for declaration of the aforesaid status. Moreover, these are only the proceedings for the purpose of providing the bare necessities of life. The electricity and water are the bare necessities of life and not the luxuries. If a person who is in possession of the premises has not been provided with the electricity and water he has all the right to apply to the concerned authorities for giving him those facilities and if those facilities are being given by the concerned authorities it will not create any right of whatever nature in the premises. These proceedings are only relevant to the extent of providing the facilities and nothing more than that. In these proceedings, the inter-se rights of the parties are not finally adjudicated and decided.

9. In view of these facts, even otherwise by ordering for giving of the electricity connection to the respondent No.3 in the premises, it cannot be said that any prejudice has been caused to the petitioner. To oppose such an application by the landlord or the owner of the premises is nothing but only to create hurdle in the way of the person who is in possession of the premises so that he may go out of the premises. To avoid all these inconveniences to be caused to the tenant or the person in possession of the premises by the landlord or owner, a provision has been enacted in the Bombay Rent Control Act, and the obvious object is to see that a person in possession of the premises may not be deprived of the bare necessities of life. So taking into consideration the totality of the facts of this case, I am satisfied that the order impugned in this Special Civil Application has not caused any prejudice to the petitioner nor the inter-se rights of the petitioner and respondent No.3 deemed to have been determined in these proceedings.

10. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this Court stands vacated.
